

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DONNA GARCIA,)	
)	
Plaintiff,)	
)	
vs.)	No. 11-01253 EMC
)	
RESURGENT CAPITAL FINANCIAL)	
SERVICES, INC., LVNV FUNDING,)	
LLC, THE BRACHFELD LAW GROUP,)	
P.C., et al.,)	
)	
Defendants.)	
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VOLUME I

**DEPOSITION OF THE BRACHFELD LAW GROUP, PC'S CORPORATE
DESIGNEE PURSUANT TO FRCP 30(B)(6)**

(JONATHAN BIRDT, ESQ.)

Toluca Lake, California

Tuesday, November 1, 2011

REPORTED BY:

**KRISTIN L. MATTSSEN
CSR NO. 12897**

**JOB NO.
68357WIL/A**

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1 of work other than work that's directed towards
2 attempting to collect debts?

3 A No.

4 Q Who is Resurgent Financial?

5 A Other than a client of The Brachfeld Law Group,
6 I don't know.

7 Q Do you also know them as Resurgent Capital?

8 A I know them as Resurgent. I don't know what
9 the various entities are.

10 Q Does Brachfeld Law Group collect or attempt to
11 collect debts for Resurgent?

12 A I'm not sure if it's the Resurgent name used in
13 litigation or not. I'm not involved in collection
14 activities.

15 Q I'm not asking whether you're personally
16 involved, Mr. Birdt. As the corporate designee, I'm
17 asking you does Brachfeld Law Group attempt to collect
18 debts for Resurgent?

19 A Yes.

20 Q Does Brachfeld Law Group attempt to collect
21 debts for LVNV Funding?

22 A Yes.

23 Q I take it these are consumer debts, not --

24 THE REPORTER: "Not" -- can you repeat that,
25 Counsel.

DONNA GARCIA
CONFIDENTIAL

10/21/2011

1 fourth paragraph after you wrote the sentence -- the
2 first sentence, you then wrote, "I wrote a letter to
3 them again explaining that this is not my bill, that it
4 is probably my ex-husband's." When you wrote that it
5 was -- that the bill was probably your ex-husband's, was
6 that -- what was that based on? Why did you conclude
7 that?

8 A. I believed the bill not to be mine. When I
9 spoke with Ventus the first time, I spoke with Pat
10 Young. I told her it wasn't mine. I told her I
11 believed it was my ex-husband's, that he had bought
12 solar paneling and siding. She said siding or
13 something. Prior in this conversation I had asked,
14 "What is this for? And do you have my signature on
15 anything?" And she said, "No." That was when I went on
16 about my ex-husband.

17 Q. If you turn -- excuse me. If you turn to the
18 second page of Exhibit 3, the first sentence you wrote
19 there -- and, for the record, it's Exhibit 3, and this
20 second page of Exhibit 3 is Garcia 8. The paragraph
21 begins, "Both my current husband and I have received
22 numerous phone calls about this bill." At the time that
23 you wrote that in September 2006, was that accurate; you
24 had started receiving phone calls?

25 A. Correct.

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1 Q Do you see the date in the upper left-hand
2 corner, December 10th, 2006?

3 A I do.

4 Q Is this the letter that you're indicating
5 Brachfeld does not dispute receiving from Ms. Garcia?

6 A I believe it is.

7 Q And how do you know that Brachfeld received
8 this letter?

9 A Our business records show that on
10 December 14th, we received a dispute letter and placed
11 the account -- an account on a hold status.

12 Q Why was the account placed on a hold status?

13 A Because that's the procedure we discussed
14 before. Any time there's a dispute, refusal to pay, or
15 cease and desist, we place the account on a hold status
16 until the matter is appropriately investigated.

17 Q I see that Garcia -51 appears to be a
18 continuation of this December 10th, 2006 letter. Is
19 that a fair representation?

20 A It does appear to be, yes.

21 Q What other letters were received with this
22 document?

23 A I don't know.

24 Q So does Brachfeld note this account as having
25 received the cease-and-desist letter after receiving the

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1 Q And you received a letter from Ms. Garcia,
2 saying she was not going to pay; isn't that correct?

3 A On the other account.

4 Q The question is did you receive a letter from
5 Ms. Garcia, saying she was not going to pay; yes or no?

6 A In December of 2006, we received a refusal to
7 pay from Ms. Garcia on the account related to her
8 ex-husband's aluminum siding.

9 Q Ms. Garcia sent you a letter, saying she was
10 not going to pay on the account you were attempting to
11 collect on; isn't that correct?

12 A No.

13 Q You did receive Ms. Garcia's letter dated
14 December 10th, 2006; isn't that correct?

15 A Yes.

16 Q What does -- looking at the top of the letter,
17 you see the regarding section says "Sears LVNV Funding
18 LLC"; isn't that right?

19 A Yes.

20 Q And you were attempting to collect a debt for
21 Sears "LVN" Funding LLC; isn't that right?

22 A Yes.

23 Q Below that, it says "File #MLN03755." What
24 does that refer to?

25 A That refers to the account related to the

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1 freezer your client purchased in 2004.

2 Q And that is the account you were attempting to
3 collect on; correct?

4 A MLN03755? Yes.

5 Q Mr. Birdt, looking back at Garcia No. -128, do
6 you see the letter dated February 11th, 2011, from
7 Ms. Garcia to Brachfeld?

8 A Yes.

9 Q Did Brachfeld receive that letter?

10 A Yes.

11 Q And that letter also says "RE: Sears LVNV
12 Funding LLC"?

13 A Yes.

14 Q And that letter says that she refuses to pay
15 the debt; is that right?

16 A This letter says she refused to pay the debt
17 incurred by her husband for the siding on his house.

18 Q What action did Brachfeld take after receiving
19 this letter?

20 A We placed the account on a protected status and
21 then promptly thereafter closed it.

22 Q Why did you close it?

23 A I don't know.

24 Q Isn't it true to say that you have indicated
25 previously that you closed the account because you

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1 received a cease-and-desist letter and therefore closed
2 the account?

3 A I don't know.

4 You're looking at me like you didn't hear me,
5 and there's a great deal of background coming through
6 your speaker.

7 Q I'm sorry, Mr. Birdt. I can't hear you.

8 A There's a problem with your computer. We've --
9 I think it's solved now.

10 My answer was I don't know, I think.

11 THE REPORTER: Yes.

12 BY MR. WILCOX:

13 Q And -- and in the regarding section, Ms. Garcia
14 wrote in this letter to Brachfeld "File #MLN03755";
15 isn't that correct?

16 A And then she refers to her ex-husband's account
17 and the divorce.

18 Q So you knew Ms. Garcia was sending a letter
19 regarding MLN03755; correct?

20 A No.

21 Q So according to Brachfeld's policy, then, it
22 would have been acceptable to continue to collect on
23 this account from Ms. Garcia?

24 A In this case, upon receipt of the letter,
25 pursuant to our policy, it was immediately placed in a

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1 hold status on a protected desk and the cease and desist
2 was honored until we were instructed by our client to
3 close the file, which we did.

4 Q When Brachfeld received the December 10th,
5 2006 letter, did it report that to Resurgent?

6 A I believe we did.

7 Q Did Resurgent give Brachfeld any instructions
8 to cease collecting?

9 A We were instructed to close the file.

10 Q Was the file closed?

11 A Yes. On January 28th, 2007.

12 Q How do you know that?

13 A By reviewing our business records previously
14 provided to you.

15 Q Looking back, then, at Exhibit 4, if you look
16 at the Bates stamp E-mails -9, are these the business
17 records known as the paperless file that you've referred
18 to?

19 A Your first page on page -9, the margins are cut
20 off, so I don't know what else is cut off, but this is
21 the document I'm referring to. Well, no. No, it's not.
22 Hold on. I think this is the LVNV, so there's two sets.

23 Stand by.

24 Starting on page -30 appears to be at least a
25 more correct, vertically, representation of our

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1 A What letter?

2 Q Mr. Birdt, Brachfeld received a letter from
3 Ms. Garcia on December 10 -- approximately
4 December 10th, 2006; isn't that right?

5 A December 14th, yes.

6 Q And there was an investigation made into that
7 letter; yes?

8 A I don't know.

9 Q And the conclusion of the investigation was to
10 close the file; correct?

11 A I don't know if there was an investigation.
12 The file was closed.

13 Q The SOP would have been to forward that letter
14 to Resurgent; yes?

15 A Yes.

16 Q And the "SOP" means "standard operating
17 procedure"?

18 A Our custom and practice would have been to
19 forward it. I don't know if there was specifically an
20 SOP on that point at that time.

21 Q And you have no reason to believe why that
22 letter would not have been forwarded?

23 A Correct.

24 Q When Resurgent responds to Brachfeld regarding
25 what action it takes in regard --

EXHIBIT 2

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UNITED STATES DISTRICT COURT
DISTRICT OF CALIFORNIA
SAN JOSÉ DIVISION

DONNA GARCIA,

Plaintiff,

C.A. No.

11-01253 EMC

vs.

RESURGENT CAPITAL FINANCIAL SERVICES, INC.; LVNV
FUNDING, LLC; THE BRACHFELD LAW GROUP, P.C., ET AL.,

Defendants.

VIDEOTAPED

DEPOSITION OF: JEAN PAUL TORRES

DATE: November 9, 2011

TIME: 11:10 a.m.

LOCATION: A. WILLIAM ROBERTS, JR. & ASSOCIATES
1200 Woodruff Road, Suite A-3
Greenville, South Carolina

TAKEN BY: Counsel for Plaintiff

REPORTED BY: KATHY P. TAYLOR,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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13 (Index at rear of transcript)

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1 MR. WILCOX: Okay. It's 9:10 California
2 time. It should be 11:10 a.m. on the East Coast in
3 South Carolina, Greenville. This is the case of
4 Donna Garcia versus Resurgent Capital Services and
5 LVNV, LLC, and the Brachfeld Law Group, PC, Case
6 Number 11-01253 EMC. We are here for the deposition
7 of Resurgent Capital Services, LP corporate designee.
8 We're being videotaped and audiotaped at all times
9 unless noted to go off the record.

10 Would all present please identify
11 themselves, beginning with the witness.

12 MR. TORRES: Jean Paul Torres.

13 MR. FOSTER: Nabil Fos-...

14 MR. WILCOX: Anybody else?

15 MR. FOSTER: And Nabil Foster.

16 MR. WILCOX: Okay. Anyone else in the
17 room?

18 MR. FOSTER: No one else here in the room,
19 although, Mr. Wilcox, what about the representative
20 for Brachfeld & Associates; they're not here in the
21 room, and are they there in your office? Did you
22 give them notice of the deposition?

23 MR. WILCOX: They've received notice of the
24 deposition. They had sent an e-mail earlier in this
25 case, maybe six or so weeks ago, stating that they

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1 were not going to be participating in depositions.
2 No one has called me this morning to say they were
3 going to participate in the deposition, so my
4 suspicion is they -- as they have before in the other
5 depositions in South Carolina, they're simply not
6 going to appear.

7 MR. FOSTER: Okay. That's fine. Just
8 wanted to make sure the -- we knew where they were if
9 they didn't want to be here. So...

10 MR. WILCOX: Thank you. And I'll just note
11 for the record that I just telephoned Mr. Dalby in
12 San Francisco, and he indicated that he's not going
13 to appear by telephone either.

14 MR. FOSTER: All right. Mr. Wilcox...

15 MR. WILCOX: Okay.

16 MR. FOSTER: Mr. Wilcox, before you start
17 getting going, I wanted to let you know that
18 Mr. Torres here, he -- he's here as the corporate
19 representative of -- of Resurgent, but he's also
20 going to be the corporate representative for LVNV.
21 So for the sake of time, if you want to try to move
22 things along, we can -- we can accomplish, you know,
23 two things at once in terms of getting answers to
24 questions on behalf of the two entities. Because I
25 know you had two deposition notices, but I don't know

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1 if you want to go through the hassle of asking the
2 same question twice.

3 MR. WILCOX: Very good. I'll proceed as if
4 we're going through one -- one deposition here for
5 both entities.

6 Mister -- Mr. Torres, do you understand
7 that you're the corporate designee this morning for
8 both Resurgent Capital Services and LVNV Funding?

9 MR. TORRES: Yes. I do.

10 MR. WILCOX: Okay. Very good. Madam Court
11 Reporter, could you please swear in the witness.

12 JEAN PAUL TORRES,
13 Being first duly sworn, testified as follows:

14 EXAMINATION

15 BY MR. WILCOX:

16 Q. Hi, Mr. Torres. Good morning.

17 A. Good morning.

18 Q. We were just chatting before you got sworn
19 in, so I just want to make sure we're -- we're clear.
20 Is it your understanding that you are the corporate
21 designee this morning for both Resurgent Capital
22 Services and LVNV Funding?

23 A. Yes.

24 Q. Okay. Very good. What is your date of
25 birth?

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1 offices.

2 Q. Does LVNV Funding have any employees?

3 A. No.

4 Q. What is your understanding of the
5 relationship between LVNV Funding and Resurgent
6 Capital?

7 A. LVNV Funding is basically an asset-holding
8 entity, and Resurgent Capital manages all of that on
9 behalf of LVNV Funding.

10 Q. Are both of the companies managed from the
11 South Main Street office in Greenville?

12 MR. FOSTER: Object to the form of the
13 question.

14 A. Resurgent is managed from that address.
15 BY MR. WILCOX:

16 Q. I'm sorry, Mr. Torres. Can you repeat
17 that? You faded in and out.

18 A. Yeah. I'm sorry. There was static.

19 Resurgent and -- I'm sorry. Resurgent is
20 managed at that address. And LVNV Funding,
21 everything is handled through that address.

22 Q. When you say everything is handled, what do
23 you mean?

24 A. All the departments that are owned by LVNV,
25 Resurgent manages them; Resurgent places them with

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1 as the date the account was opened, the date of last
2 payment, the date of -- of the charge-off, things
3 like that.

4 Q. When the -- when LVNV is -- acquires the
5 account, do they acquire the original cardholder
6 agreement?

7 A. Usually, no.

8 Q. When they -- when LVNV acquires the
9 original -- or when LVNV acquires the account, do
10 they acquire the monthly billing statements?

11 A. Usually not.

12 Q. When LVNV acquires the account, do they
13 acquire the point-of-sales ticket item showing
14 individual transactions?

15 A. No. Usually not.

16 Q. When LVNV acquired this account relating to
17 Donna Garcia, were any of those three items that you
18 just spoke about acquired in the original
19 acquisition?

20 A. To my knowledge, no.

21 Q. So as I understand it, LVNV then places the
22 account with Ventus Capital to attempt to collect; is
23 that right?

24 A. No. This was placed with Resurgent
25 Capital, who then placed it with Ventus.

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1 THE COURT REPORTER: It's been marked.

2 BY MR. WILCOX:

3 Q. Okay. Mr. Torres, do you now have -- now
4 have in front of you what was marked as Exhibit 2?

5 A. I do.

6 Q. And if you'd take a look at the
7 Bates-stamped page Garcia 34 in the bottom right
8 corner.

9 A. I have it.

10 Q. Is that the CitiCard letter that you saw in
11 the OnBase system?

12 A. Yes. It is.

13 Q. And this letter is dated April 4th, 2006?

14 A. Correct.

15 Q. From Donna Garcia, CitiCard?

16 A. Correct.

17 Q. Going a little further into the packet here
18 of Exhibit 2, could you please take a look at Garcia
19 42.

20 A. Okay.

21 Q. And is that a letter dated September 27th,
22 2006, from Ms. Garcia to Sears Credit Card Services?

23 A. Yes. That is correct.

24 Q. Is that the letter that you saw in the
25 OnBase system?

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1 A. Yes.

2 Q. Looking back at Exhibit 1, R-72, there is a
3 note entry above where we were just looking, which
4 seems to say "critical notes". And it's hard to
5 read. Again, it's kind of blacked out. But can you
6 read that?

7 A. Which date were you referring to?

8 Q. Well, it appears to be just above the upper
9 October 19th, '06, date entry.

10 A. The one that says: Customer service seller
11 written in cease and desist received?

12 Q. Yeah. So is it -- is that a note that's
13 made by a T. Thomas on October 19th, '06, at
14 1:20 p.m.?

15 A. That is correct. Underneath, it simply
16 says: No note.

17 Q. Okay. Do you know why it says: No note?

18 A. Because the document is in OnBase. So
19 someone can click on OnBase, look at the document,
20 and -- and see what it is.

21 Q. Okay. So did you hit F7 and look into
22 OnBase to see what letter was attached to -- to this
23 October 19th, '06, 1:20 p.m. note by T. Thomas?

24 A. Yes. I did.

25 Q. And what letter was attached?

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1 this, I look at basically everything we have
2 available regarding the account.

3 Q. Looking at the note entry just above on
4 Exhibit 1, R-72, it seems to say: Customer-service
5 agency, parenthesis, outside and legal, close
6 parenthesis, written in cease and desist received,
7 and a note entry of October 25th, 2006, at 10:48 a --
8 a.m. by L. Cappiello.

9 Do you see that there?

10 A. I do.

11 Q. So that note entry is a little bit
12 different in wording than the ones that were below.
13 What does it mean when it says: Outside and legal?

14 A. In this case, it means we received
15 something from our legal collection agency, being
16 Brachfeld.

17 Q. So -- excuse me. When you looked in the
18 OnBase system, did you see the letter that you
19 received from Brachfeld on October 25th, '06?

20 A. Yes. I did.

21 Q. Can you describe that letter for us,
22 please.

23 A. Well, we have a copy of it in the exhibit.

24 Q. I'm sorry, Mr. Torres. You broke up.

25 A. I said it looks like we have a copy of it